

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

JAMES KIMMONS GRAY  
Plaintiff

V.

NO. 2:96CV148-B-B

CITY OF OLIVE BRANCH, MISSISSIPPI, and  
D.M. NICHOLS, in his Individual Capacity  
Defendants

CONSOLIDATED WITH

TIMOTHY PRESLEY  
Plaintiff

V.

NO. 2:96CV187-B-B

CITY OF OLIVE BRANCH, MISSISSIPPI, and  
D.M. NICHOLS, in his Individual Capacity  
Defendants

CONSOLIDATED WITH

HAROLD FRANCE  
Plaintiff

V.

NO. 2:96CV188-B-B

CITY OF OLIVE BRANCH, MISSISSIPPI, and  
D.M. NICHOLS, in his Individual Capacity  
Defendants

**MEMORANDUM OPINION**

This cause comes before the court upon the defendants' motions for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

**FACTS**

The plaintiffs were employed as police officers with the City of Olive Branch, Mississippi. In January of 1996, six officers of the Olive Branch Police Department, including the plaintiffs, were suspended with pay pending investigation of allegations of sexual misconduct with a minor. At the conclusion of the city's investigation, five of the officers, including the plaintiffs, were terminated from employment. The sixth officer was demoted from captain to patrolman.

When the plaintiffs were suspended, the defendant Nichols, Mayor of Olive Branch, issued statements to the press to the effect that six officers had been suspended pending an investigation of allegations of inappropriate sexual behavior, and that the investigation involved a juvenile female. The mayor further stated that absolute disciplinary action would be taken after the investigation. Although the officers were unnamed at the time, upon their termination from employment their names were released to the press. There was substantial coverage of the investigation and terminations in the local media, and every time a story was published about the officers, the media would recount the mayor's statements regarding the investigation.

After their terminations, the plaintiffs were allowed to appear before the Board of Alderman to present any testimony they wished concerning their termination. However, despite their request for such information, the plaintiffs were not given the

specific basis for their terminations, were not given access to the investigation reports or the statements taken by the investigation team, were not given a list of witnesses who had given statements against them, and were not allowed to question members of the investigation team. The plaintiffs, who had been terminated for such vague reasons as "conduct unbecoming a police officer" without reference to specific instances, were effectively limited to giving a general denial of unspecified allegations of wrongdoing.

#### **LAW**

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry

of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

#### **A. Liberty Interest**

All three plaintiffs assert that the City of Olive Branch violated their "liberty interest" under the due process clause of the Fourteenth Amendment by publicizing false and stigmatizing charges concerning their termination without affording the plaintiffs a meaningful name-clearing hearing. Upon due consideration, the court finds that there are genuine issues of material fact concerning the plaintiffs' liberty interest claims, including but not limited to, whether the defendant city published stigmatizing comments concerning the plaintiffs' termination, and whether the plaintiffs were afforded a meaningful name-clearing hearing before the Board of Alderman.

#### **B. Equal Protection**

The plaintiff Gray asserts that the City of Olive Branch violated his right to equal protection under the Fourteenth Amendment in that the city arbitrarily treated a similarly situated

officer, Ernest Givens, differently, though Givens allegedly committed the same conduct as the plaintiff. The plaintiff asserts that Givens, who was demoted rather than terminated, was afforded special treatment because he had incurred the favor of the mayor by failing to charge the mayor's son with larceny on an earlier occasion. The plaintiff asserts that the city has failed to offer a legitimate explanation for the discrepancy in the discipline given to Givens.

The court finds that, taking arguendo the plaintiff's allegations as true, the city has, at most, merely shown favoritism toward one officer over another. While the plaintiff may question the ethics of this act, it is not a violation of the equal protection clause. See Vera v. Tue, 73 F.3d 604, 609-610 (5th Cir. 1996) (equal protection clause not violated where plaintiff has merely shown nepotistic favoritism on the part of the defendant). The equal protection clause is violated only by intentional discrimination. Vera, 73 F.3d at 609. Discriminatory purpose implies that the defendant singled out a particular group for disparate treatment and selected its course of action at least in part for the purpose of causing its adverse effect on an identifiable group. Id. A violation of the equal protection clause occurs only when the governmental action in question classifies or distinguishes between two or more relevant persons or groups. Id. at 609-610. The plaintiff's allegations do not

indicate that he was a member of an identifiable group for equal protection purposes. If the challenged government action does not appear to classify or distinguish between two or more relevant persons or groups, then the action, even if irrational, does not deny them equal protection of the law. Id. at 610.

### **C. Defamation**

All three plaintiffs assert that the defendant Nichols, in his individual capacity, is liable for defamation arising out of the statements Nichols made to the media concerning the investigation. Upon due consideration, the court finds that there are genuine issues of material fact concerning the plaintiffs' claims for defamation, including but not limited to, whether the statements made by defendant Nichols were true, and whether the statements, taken as a whole and not read in piecemeal fashion, were defamatory in nature.

### **D. Invasion of Privacy**

Plaintiffs France and Presley assert that the defendant Nichols, in his individual capacity, is liable for false light invasion of privacy. The Mississippi Supreme Court has recognized the tort of false light invasion of privacy. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378, 382 (Miss. 1997) ("In Prescott...this Court implicitly recognized a claim of...Invasion of Privacy through...False Light"); Young v. Jackson, 572 So. 2d 378, 381-382 (Miss. 1990) ("where, as here, the invasion [of privacy] is by

private parties, we have recognized a right of action in at least three contexts: (1) the portrayal of Plaintiff in a false light, Prescott..."); see also Prescott v. Bay St. Louis Newspapers, Inc., 497 So. 2d 77, 79-81 (Miss. 1986). The court notes that "[t]here may be little or no reason to recognize false light claims where...the false light alleged is defamatory in nature." Prescott, 497 So. 2d at 80. "[T]he real benefit of false light actions is in providing redress where the publication is false yet does not amount to defamation." Id. In the present case, the defendant Nichols will be hard-pressed to prove that his statements were not defamatory, though he may be able to escape liability, on both defamation and false light, by proving that the statements were true. Therefore, there may be no basis for the plaintiffs to recover on a theory of false light invasion of privacy. However, at this time, the court will not dismiss the invasion of privacy claims. As with the claims for defamation, the court finds that there are genuine issues of material fact, including but not limited to, whether the statements made by defendant Nichols were true, and whether the statements, taken as a whole and not read in piecemeal fashion, placed the plaintiffs in a false light.

#### **CONCLUSION**

For the foregoing reasons, the court finds that the defendants' motions for summary judgment should be granted as to

the plaintiff Gray's equal protection claim, and that the defendants' motions should be denied in all other respects.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE